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U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
*Office of Administrative Appeals* MS 2090
Washington, DC 20529-2090

U.S. Citizenship and Immigration Services

B6

[redacted]

FILE: [redacted] Office: NEBRASKA SERVICE CENTER Date: AUG 16 2010
LIN 08 025 51331

IN RE: Petitioner:
Beneficiary: [redacted]

PETITION: Immigrant Petition for Alien Worker as a Skilled Worker or Professional pursuant to Section 203(b)(3) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(3)

ON BEHALF OF PETITIONER:

WILLIAM B. BENNETT
MANULKIN, GLASER, AND BENNETT
10175 SLATER AVENUE, STE. 111
FOUNTAIN VALLEY, CA 92708

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the law was inappropriately applied by us in reaching our decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. The specific requirements for filing such a request can be found at 8 C.F.R. § 103.5. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of $585. Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires that any motion must be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Perry Rhew
Chief, Administrative Appeals Office

**DISCUSSION:** The preference visa petition was denied by the Director, Nebraska Service Center, and is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner is a preschool located in Costa Mesa, California. It seeks to employ the beneficiary permanently in the United States as a preschool teacher. As required by statute, the petition is accompanied by an ETA Form 9089, Application for Permanent Employment Certification, approved by the United States Department of Labor (DOL). The director determined that the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage beginning on the priority date of the visa petition. The director denied the petition accordingly.

The record shows that the appeal is properly filed, timely and makes a specific allegation of error in law or fact. The procedural history in this case is documented by the record and incorporated into the decision. Further elaboration of the procedural history will be made only as necessary.

As set forth in the director's July 14, 2009 denial, the single issue in this case is whether or not the petitioner has the ability to pay the proffered wage as of the priority date and continuing until the beneficiary obtains lawful permanent residence.

Section 203(b)(3)(A)(i) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(3)(A)(i), provides for the granting of preference classification to qualified immigrants who are capable, at the time of petitioning for classification under this paragraph, of performing skilled labor (requiring at least two years training or experience), not of a temporary nature, for which qualified workers are not available in the United States.

The regulation at 8 C.F.R. § 204.5(g)(2) states in pertinent part:

> *Ability of prospective employer to pay wage.* Any petition filed by or for an employment-based immigrant which requires an offer of employment must be accompanied by evidence that the prospective United States employer has the ability to pay the proffered wage. The petitioner must demonstrate this ability at the time the priority date is established and continuing until the beneficiary obtains lawful permanent residence. Evidence of this ability shall be either in the form of copies of annual reports, federal tax returns, or audited financial statements.

The petitioner must demonstrate the continuing ability to pay the proffered wage beginning on the priority date. The priority date is established when the petitioner files the ETA Form 9089 with any office within the employment system of the DOL. *See* 8 C.F.R. § 204.5(d). The petitioner must also demonstrate that, on the priority date, the beneficiary had the qualifications stated on its ETA Form 9089 as certified by the DOL and submitted with the instant petition. *Matter of Wing's Tea House*, 16 I&N Dec. 158 (Act. Reg. Comm. 1977).

Here, the ETA Form 9089 was filed by the petitioner and accepted for processing by the DOL on April 30, 2007. The prevailing and the offered wage stated on that form is $11.46 per hour or

$20,857.20 per year based on a 35-hour-a-week full-time position.[1] The ETA Form 9089 also states that the position requires the beneficiary to have a diploma in Montessori teaching method and a minimum of 2 years work experience in the job offered.

The AAO conducts appellate review on a *de novo* basis. *See Soltane v. DOJ*, 381 F.3d 143, 145 (3d Cir. 2004. The AAO considers all pertinent evidence in the record, including new evidence properly submitted upon appeal.[2]

To show that it has the ability to pay $11.46 per hour beginning on April 30, 2007, the petitioner submitted copies of the following evidence:

- IRS Forms 1120S, U.S. Income Tax Return for an S Corporation, for 2006 and 2007;
- Profit and Loss statement for the period January through December 2008 (unaudited);[3]
- IRS Forms W-2 issued by the petitioner to the beneficiary between 2006 and 2008;
- IRS Forms W-2 issued by the [redacted] to the beneficiary for 2007 and 2008;
- Paystubs issued by the petitioner and the [redacted] to the beneficiary covering various pay periods from November 2006 to March 2009;
- Bank statements covering various periods in 2008;
- Construction loan documents;
- Various school enrollment agreements;
- A letter dated July 10, 2007 from the school's administrator, [redacted] offering to pay the beneficiary $12/hour for a teacher's position with the petitioner;
- A letter dated March 11, 2009 from [redacted] generally stating that the petitioner and the [redacted] are under the same ownership; and
- A letter written by the petitioner's manager of accounting, [redacted], dated April 7, 2009 who claimed that the beneficiary had been paid more than $401.10 per week by

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[1] The job offer from the petitioner did not specifiy how many hours per week the beneficiary needed to work but under the regulations, it must be for a permanent and full-time position. *See* 20 C.F.R. §§ 656.3; 656.10(c)(10). The DOL precedent establishes that full-time means at least 35 hours or more per week. *See* Memo, Farmer, Admin. for Reg'l. Mngm't., Div. of Foreign Labor Certification, DOL Field Memo No. 48-94 (May 16, 1994). On appeal, counsel contends that the beneficiary has been paid the proffered wage of $11.46 per hour based on a 35-hour week,

[2] The submission of additional evidence on appeal is allowed by the instructions to the Form I-290B, which are incorporated into the regulations by the regulation at 8 C.F.R. § 103.2(a)(1). The record in the instant case provides no reason to preclude consideration of any of the documents newly submitted on appeal. *See Matter of Soriano*, 19 I&N Dec. 764 (BIA 1988).

[3] This document, according to counsel for the petitioner, is submitted in lieu of the petitioner's 2008 tax return, which is not yet due at the time the appeal is filed. The AAO will not consider the petitioner's ability to pay in 2008 in this decision.

the petitioner in 2007 and that the petitioner had $53,157 net current assets in 2008, more than sufficient to pay the beneficiary's wage for that year.

The evidence in the record of proceeding shows that the petitioner is structured as an S corporation, with [redacted] as the sole shareholder of the corporation. On the petition, the petitioner claimed to have been established in 1999[4] and to currently employ 5 workers. According to the tax returns in the record, the petitioner's fiscal year is based on a calendar year. On the ETA Form 9089, signed by the beneficiary on July 17, 2007, the beneficiary claimed to have worked for the petitioner since November 8, 2006.

The petitioner must establish that its job offer to the beneficiary is a realistic one. Because the filing of an ETA 9089 labor certification application establishes a priority date for any immigration petition later based on the ETA 9089, the petitioner must establish that the job offer was realistic as of the priority date and that the offer remained realistic for each year thereafter, until the beneficiary obtains lawful permanent residence. The petitioner's ability to pay the proffered wage is an essential element in evaluating whether a job offer is realistic. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977); *see also* 8 C.F.R. § 204.5(g)(2). In evaluating whether a job offer is realistic, United States Citizenship and Immigration Services (USCIS) requires the petitioner to demonstrate financial resources sufficient to pay the beneficiary's proffered wages, although the totality of the circumstances affecting the petitioning business will be considered if the evidence warrants such consideration. *See Matter of Sonegawa*, 12 I&N Dec. 612 (Reg. Comm. 1967).

In determining the petitioner's ability to pay the proffered wage during a given period, USCIS will first examine whether the petitioner employed and paid the beneficiary during that period. If the petitioner establishes by documentary evidence that it employed the beneficiary at a salary equal to or greater than the proffered wage, the evidence will be considered *prima facie* proof of the petitioner's ability to pay the proffered wage.

Based on the evidence submitted, the beneficiary received the following wages from the petitioner:

- In 2006, the beneficiary received $3,720;[5]
- In 2007, the beneficiary received $12,195.60[6] ($8,661.60 less than the proffered wage of $20,857.20 per year); and

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[4] A search of the California Secretary of State's website reveals that [redacted] or the petitioner was incorporated on August 23, 1995. The tax returns submitted also show that the petitioner became a corporation under chapter S of the Internal Revenue Code on August 23, 1995.

[5] The 2006 payment will not be considered since the petitioner is only required to demonstrate its ability to pay from April 30, 2007.

[6] A review of the paystubs from the petitioner shows that the beneficiary was paid $12/hour during her employment at [redacted].

- In 2008, the beneficiary received $7,932 ($12,925.20 less than the proffered wage of $20,857.20 per year).

The beneficiary also received the following wages from the [redacted]

- In 2007, the beneficiary received $12,247[7] and
- In 2008, the beneficiary received $17,206.25.

Counsel for the petitioner repeatedly states throughout this proceeding including on appeal that the [redacted] is a sister company of the petitioner and that both entities can be deemed a "single employer entity." A letter from [redacted] states that both the petitioner and the [redacted] are under the same ownership. Based on the single employer entity theory, counsel concludes that the wages from the [redacted] should be combined with the wages received by the beneficiary from the petitioner. The combined wages, according to the petitioner, are *prima facie* evidence of the petitioner's ability to pay.

The director rejected counsel's theory of the single employer entity and stated:

> A corporation is a separate and distinct legal entity from its owners or shareholders, and consequently, any assets of its shareholders or of other enterprises or corporations cannot be considered in determining the petitioning corporation's ability to pay the proffered wage. *See Matter of Aphrodite Investments, Ltd.*, 17 I&N Dec. 530 (Comm. 1980). USCIS will not consider the financial resources of individuals or entities who have no legal obligation to pay the wage *See Sitar v. Ashcroft*, 2003 WL 22203713, p.3 (D.Mass. Sept. 18, 2003).

The AAO agrees with the director. The petitioner and the [redacted] are, as the director stated above, distinct and separate legal entities.[8] USCIS may not "pierce the corporate veil" and look to the assets of the corporation's owner or of other sister enterprise to satisfy the corporation's ability to pay the proffered wage. In addition, the record contains no evidence showing that the [redacted] is controlled and run by the same ownership and management as the petitioner's. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

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[7] A review of the paystubs from [redacted] reveals that the beneficiary was paid $12.50 per hour during her employment at [redacted] in 2007 and 2008.

[8] The petitioner and the [redacted] have different employer identification numbers (EIN). Whether the two entities may be considered as one under the Internal Revenue Code, the Department of Labor, or for H-1B dependence, has not been established, and is moreover not relevant to determining the petitioner's ability to pay.

The AAO nevertheless recognizes that the petitioner has paid partial wages to the beneficiary from 2007 onwards. In order for the petitioner to meet its burden of proving by a preponderance of the evidence that it has the ability to pay the proffered wage from the priority date, it must be able to pay the difference between the wages actually paid to the beneficiary and the proffered wage, which is:

- $8,661.60 in 2007 and
- $12,925.20 in 2008.

A letter dated March 11, 2009 from [redacted], Director,[10] states that the beneficiary worked full-time as a preschool teacher at the petitioner's place of business from October 2006 to July 2007 but due to a major renovation of the building where she regularly taught, she was placed to work at [redacted], another preschool under the same ownership as the petitioner, for one year. The pay stubs in the record show that the beneficiary was employed by [redacted] from July 2007 to August 2008.

At issue here, however, is not where the beneficiary worked during the qualifying period, but rather whether the petitioner has the ability to pay the proffered wage continuously throughout the qualifying period from the priority date. Thus, in order to meet its burden of proving by a preponderance of the evidence that the petitioner has the ability to pay the proffered wage, it must be able to pay $8,661.60 in 2007 and $12,925.20 in 2008. The petitioner can pay this amount through its net income or net current assets.

If the petitioner chooses to pay the difference between the two wages through its net income, USCIS will examine the net income figure reflected on the petitioner's federal income tax return, without consideration of depreciation or other expenses. *River Street Donuts, LLC v. Napolitano*, 558 F.3d 111 (1st Cir. 2009). Reliance on federal income tax returns as a basis for determining a petitioner's ability to pay the proffered wage is well established by judicial precedent. *Elatos Restaurant Corp. v. Sava*, 632 F. Supp. 1049, 1054 (S.D.N.Y. 1986) (*citing Tongatapu Woodcraft Hawaii, Ltd. v. Feldman*, 736 F.2d 1305 (9th Cir. 1984)); *see also Chi-Feng Chang v. Thornburgh*, 719 F. Supp. 532 (N.D. Texas 1989); *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. 1080 (S.D.N.Y. 1985); *Ubeda v. Palmer*, 539 F. Supp. 647 (N.D. Ill. 1982), *aff'd*, 703 F.2d 571 (7th Cir. 1983). Reliance on the petitioner's gross sales and profits and wage expense is misplaced. Showing that the petitioner's gross sales and profits exceeded the proffered wage is insufficient. Similarly, showing that the petitioner paid wages in excess of the proffered wage is insufficient.

In *K.C.P. Food Co., Inc. v. Sava*, 623 F. Supp. at 1084, the court held that the Immigration and Naturalization Service, now USCIS, had properly relied on the petitioner's net income figure, as stated on the petitioner's corporate income tax returns, rather than the petitioner's gross income. The court specifically rejected the argument that the Service should have considered income before expenses were paid rather than net income.

With respect to depreciation, the court in *River Street Donuts* noted:

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[10] The letter does not name the organization under directorship.

> The AAO recognized that a depreciation deduction is a systematic allocation of the cost of a tangible long-term asset and does not represent a specific cash expenditure during the year claimed. Furthermore, the AAO indicated that the allocation of the depreciation of a long-term asset could be spread out over the years or concentrated into a few depending on the petitioner's choice of accounting and depreciation methods. Nonetheless, the AAO explained that depreciation represents an actual cost of doing business, which could represent either the diminution in value of buildings and equipment or the accumulation of funds necessary to replace perishable equipment and buildings. Accordingly, the AAO stressed that even though amounts deducted for depreciation do not represent current use of cash, neither does it represent amounts available to pay wages.
>
> We find that the AAO has a rational explanation for its policy of not adding depreciation back to net income. Namely, that the amount spent on a long term tangible asset is a "real" expense.

*River Street Donuts* at 118. "[USCIS] and judicial precedent support the use of tax returns and the *net income figures* in determining petitioner's ability to pay. Plaintiffs' argument that these figures should be revised by the court by adding back depreciation is without support." *Chi-Feng Chang* at 537 (emphasis added).

The record before the director closed April 9, 2009 with the receipt by the director of the petitioner's submissions in response to the director's request for evidence (RFE). As of that date, the petitioner's 2008 federal income tax return was not yet due. Therefore, the petitioner's income tax return for 2007 is the most recent return available. The petitioner's tax returns demonstrate its net income for 2007, as shown in the table below.

- In 2007, the Form 1120S stated net income (loss)[11] of ($80,508) (line 18, schedule K).

[11] Where an S corporation's income is exclusively from a trade or business, USCIS considers net income to be the figure for ordinary income, shown on line 21 of page one of the petitioner's IRS Form 1120S. However, where an S corporation has income, credits, deductions or other adjustments from sources other than a trade or business, they are reported on Schedule K. If the Schedule K has relevant entries for additional income, credits, deductions or other adjustments, net income is found on line 23 (1997-2003) line 17e (2004-2005) line 18 (2006) of Schedule K. *See* Instructions for Form 1120S, 2006, at http://www.irs.gov/pub/irs-pdf/i1120s.pdf (accessed on April 26, 2010) (indicating that Schedule K is a summary schedule of all shareholder's shares of the corporation's income, deductions, credits, etc.). In the instant case, because the petitioner had additional income, credits, deductions, and other adjustments shown on its Schedule K, the petitioner's net income is found on Schedule K of its tax returns.

Therefore, the petitioner did not have sufficient net income to pay the beneficiary's proffered wage in 2007.

As an alternate means of determining the petitioner's ability to pay the proffered wage, USCIS may review the petitioner's net current assets. Net current assets are the difference between the petitioner's current assets and current liabilities.[12] A corporation's year-end current assets are shown on Schedule L, lines 1 through 6. Its year-end current liabilities are shown on lines 16 through 18. If the total of a corporation's end-of-year net current assets and the wages paid to the beneficiary (if any) are equal to or greater than the proffered wage, the petitioner is expected to be able to pay the proffered wage using those net current assets. The petitioner's tax returns demonstrate its end-of-year net current assets (liabilities) for 2007, as shown in the table below.

- In 2007, the Form 1120S stated net current assets (liabilities) of ($1,825).

Therefore, the petitioner did not have sufficient net current assets to pay the proffered wage in 2007.

Based on the net income and net current assets analysis above, it is concluded that from the date the ETA Form 9089 was accepted for processing by the DOL, the petitioner had not established that it had the continuing ability to pay the beneficiary the proffered wage.

On appeal, counsel asserts that since the priority date for the beneficiary fell on April 30, 2007, the petitioner needs only to show that it has the ability to pay the proffered wage for 34 weeks from May 1, 2007 to December 31, 2007. Not including holidays, sick leave, and other unpaid leave, the prorated proffered wage for the beneficiary in 2007, according to counsel, should be $13,637 based on a 35-hour per week or $15,572 based on a 40-hour per week, not $23,836 as the director stated in his decision.

Counsel's assertions that USCIS should prorate the proffered wage for the portion of the year that occurred after the priority date are without basis. This office will not consider 12 months of income towards an ability to pay a lesser period of the proffered wage any more than we would consider 24 months of income towards paying the annual proffered wage. The AAO will prorate the proffered wage if the record contains evidence of net income or payment of the beneficiary's wages specifically covering the portion of the year that occurred after the priority date (and only that period), such as monthly income or pay stubs. Here, a review of the paystubs submitted reflects that the beneficiary was employed and paid by the petitioner from November 1, 2006, almost six months prior to the priority date, through May 2007. From July 1 to December 31, 2007 St Matthews Montessori School paid the beneficiary's salary. Therefore, the AAO will not prorate the beneficiary's wage in 2007.

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[12] According to *Barron's Dictionary of Accounting Terms* 117 (3rd ed. 2000), "current assets" consist of items having (in most cases) a life of one year or less, such as cash, marketable securities, inventory and prepaid expenses. "Current liabilities" are obligations payable (in most cases) within one year, such accounts payable, short-term notes payable, and accrued expenses (such as taxes and salaries). *Id.* at 118.

In response to the director's request for additional evidence, the petitioner through its accounting manager, [redacted], offered its 2008 bank statements as evidence of its ability to pay. The director, according to [redacted], should treat the funds shown on the bank statements as funds available to pay the beneficiary's proffered wage during the qualifying period. However, the director declined to accept the bank statements as evidence of ability to pay, indicating that the petitioner's reliance on the balances in its bank account is misplaced. The director stated:

> First, bank statements are not among the three types of evidence, enumerated in 8 C.F.R. § 204.5(g)(2), required to illustrate a petitioner's ability to pay a proffered wage. While this regulation allows additional material "in appropriate cases," the petitioner in this case has not demonstrated why the documentation specified at 8 C.F.R. § 204.5(g)(2) is inapplicable or otherwise paints an inaccurate financial picture of the petitioner. Second, bank statements show the amount in an account on a given date, and cannot show the sustainable ability to pay a proffered wage. Third, no evidence was submitted to demonstrate that the funds reported on the petitioner's bank statements somehow reflect additional available funds that were not reflected on its tax return, such as cash on Schedule L.

The AAO agrees with the director. Even though the regulation at 8 C.F.R. § 204.5(g)(2) allows the director to accept or the petitioner to submit additional evidence, such as bank statements, such evidence is supplementary in nature and does not replace or eliminate the requirement that the petitioner must file either federal tax returns, annual reports, or audited financial statements to establish the ability to pay. In the instant case, the petitioner has submitted its complete federal tax returns for 2006 and 2007. No explanation, however, has been provided to rebut the director's reasoning for not accepting the bank statements.

In addition to the bank statements, [redacted] also provides a construction loan document as evidence of the petitioner's ability to pay. According to [redacted] the fact that the petitioner was able to secure the $1.35 million construction loan in 2007 is in itself evidence of the petitioner's financial strength and ability to pay the proffered wage. On appeal, counsel for the petitioner contends that USCIS should include the $1.35-million construction loan in the petitioner's current assets. He asserts that a construction loan is not the same as a home equity loan in that the construction loan amount is fixed and readily convertible into cash. Counsel additionally claims that $74,435 in construction in progress (CIP), as reflected at line 14 of the petitioner's 2007 schedule L, should be considered as current assets, because CIP is not a fixed asset yet. Its value, according to counsel, is readily convertible into cash.

The AAO will not augment the petitioner's net income or net current assets by adding in the $1.35 million construction loan or considering the $74,435 CIP as a net current asset. The loan document states that the loan is a drawdown line of credit to the petitioner in the amount of $1.35 million. A "bank line" or "line of credit" is a bank's unenforceable commitment to make loans to a particular borrower up to a specified maximum during a specified time period. A line of credit is not a contractual or legal obligation on the part of the bank. *See Barron's Dictionary of Finance and*

*Investment Terms*, 45 (1998). Since the line of credit is a "commitment to loan" and not an existent loan, the petitioner has not established that the unused funds from the line of credit are available at the time of filing the petition. As noted above, a petitioner must establish eligibility at the time of filing; a petition cannot be approved at a future date after the petitioner becomes eligible under a new set of facts. *See Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). Moreover, the petitioner's existent loans will be reflected in the balance sheet provided in the tax return or audited financial statement and will be fully considered in the evaluation of the corporation's net current assets. Comparable to the limit on a credit card, the line of credit cannot be treated as cash or as a cash asset. However, if the petitioner wishes to rely on a line of credit as evidence of ability to pay, the petitioner must submit documentary evidence, such as a detailed business plan and audited cash flow statements, to demonstrate that the line of credit will augment and not weaken its overall financial position. Finally, USCIS will give less weight to loans and debt as a means of paying salary since the debts will increase the firm's liabilities and will not improve its overall financial position. Although lines of credit and debt are an integral part of any business operation, USCIS must evaluate the overall financial position of a petitioner to determine whether the employer is making a realistic job offer and has the overall financial ability to satisfy the proffered wage. *See Matter of Great Wall*, 16 I&N Dec. 142 (Acting Reg. Comm. 1977).

Similarly, the AAO will not consider the CIP as a net current asset. The petitioner states on appeal that as the amount of the CIP is not yet fixed it can readily be converted into cash. The CIP, when spent, will increase the petitioner's liability, and without evidence showing that such debt will augment the firm's position, may not be considered to establish the petitioner's ability to pay.

Finally, USCIS may consider the overall magnitude of the petitioner's business activities in its determination of the petitioner's ability to pay the proffered wage. *See Matter of Sonegawa,* 12 I&N Dec. 612. The petitioning entity in *Sonegawa* had been in business for over 11 years and routinely earned a gross annual income of about $100,000. During the year in which the petition was filed in that case, the petitioner changed business locations and paid rent on both the old and new locations for five months. There were large moving costs and also a period of time when the petitioner was unable to do regular business. The Regional Commissioner determined that the petitioner's prospects for a resumption of successful business operations were well established. The petitioner was a fashion designer whose work had been featured in *Time* and *Look* magazines. Her clients included Miss Universe, movie actresses, and society matrons. The petitioner's clients had been included in the lists of the best-dressed California women. The petitioner lectured on fashion design at design and fashion shows throughout the United States and at colleges and universities in California. The Regional Commissioner's determination in *Sonegawa* was based in part on the petitioner's sound business reputation and outstanding reputation as a couturiere. As in *Sonegawa*, USCIS may, at its discretion, consider evidence relevant to the petitioner's financial ability that falls outside of a petitioner's net income and net current assets. USCIS may consider such factors as the number of years the petitioner has been doing business, the established historical growth of the petitioner's business, the overall number of employees, the occurrence of any uncharacteristic business expenditures or losses, the petitioner's reputation within its industry, whether the beneficiary is replacing a former employee or an outsourced service, or any other evidence that USCIS deems relevant to the petitioner's ability to pay the proffered wage.

In the instant case, no evidence has been presented to show that the petitioner has a sound and outstanding business reputation as in *Sonegawa*. Unlike *Sonegawa*, the petitioner has not submitted any evidence, reflecting the company's reputation or historical growth since its inception in 1995. Nor has it included any evidence or detailed explanation of the corporation's milestone achievements. The record does not contain any newspapers or magazine articles, awards, or certifications indicating the company's accomplishments.

The AAO acknowledges that the petitioner has been in a competitive field since 1995. Further, the enrollment agreements coupled with the fact that the petitioner was able to secure the $1.35 million construction loan to renovate its school show that the business is *bona fide* and viable. A review of the paystubs submitted shows that the petitioner did in fact employ the beneficiary full-time and pay her $12 per hour, more than the proffered wage, from November 2006 to May 2007 and from September 2008 onwards. Nevertheless, the record does not reflect a pattern of historic growth or the occurrence of an uncharacteristic business expenditure or loss that would explain its inability to pay the proffered wage as of the filing date and continuing through the present. Although the record contains evidence of a disruption in the beneficiary's employment with the petitioner during the 2007-2008 renovation, there is insufficient evidence that the petitioner closed completely for one year or transferred its operations and students to another site. The petitioner does not show that it lost money during the renovation or that extraordinary expenses kept it from being able to pay the beneficiary's salary. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Thus, assessing the totality of the circumstances in this individual case, it is concluded that the petitioner has not established that it had the continuing ability to pay the proffered wage. The burden of proof in these proceedings rests solely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. The petitioner has not met that burden.

**ORDER**: The appeal is dismissed.